Supreme Court Case No. S129125 Court of Appeal Case No. B175054

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

THE CITY OF GOLETA;
THE CITY COUNCIL OF THE CITY OF GOLETA,

Petitioners,

vs.

SANTA BARBARA SUPERIOR COURT,

Respondent,

OLY CHADMAR SANDPIPER GENERAL PARTNERSHIP,
a Delaware General Partnership,

Real Party in Interest.

SANTA BARBARA COUNTY SUPERIOR COURT
HON. J. WILLIAM McLAFFERTY, JUDGE

CITY OF GOLETA AND GOLETA CITY COUNCIL'S ANSWER BRIEF ON THE MERITS

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I.

INTRODUCTION

The legal issues on review are straightforward. In order to decide them, the Court must simply (1) utilize well-established rules of statutory construction to interpret Government Code[1] §66413.5, and (2) apply well-established law on estoppel to undisputed facts. This analysis results in the conclusion that the City of Goleta ("City") had discretion under §66413.5 over the final map for the Residences at Sandpiper development ("Final Map" and "Project," respectively) and was not estopped from exercising that discretion.

Dissatisified with this inescapable conclusion, Oly Chadmar Sandpiper General Partnership ("Developer") tries to complicate the issues by proffering a series of misleading arguments. Moreover, rather than accept the Court of Appeal's well-reasoned Opinion, the Developer seeks to have this Court both (1) judicially override legislatively-established policy, and (2) radically change settled law on estoppel's applicability to municipalities. But as explained below, all of the Developer's arguments are meritless.

II.

SUMMARY OF ARGUMENT

The legal core of this case is §66413.5—a statute enacted to balance developers' desire for certainty with newly incorporated cities' right not to have lame-duck county-approved projects forced upon them. The Legislature achieved that balance by requiring newly incorporated cities to approve final maps conforming to county-approved tentative maps, *but only*

[1] Unless otherwise noted, all references are to the Government Code.

if two conditions are met: (1) the tentative map application must have been submitted before the date of the first signature on the incorporation petition; *and* (2) the county must have approved the tentative map before the incorporation election. Gov't Code §66413.5(f).

Here, it is undisputed that those conditions were not met. Indeed, all parties agree that: (1) the Developer submitted the Project's tentative map application *four months* after the first signature on the incorporation petition, and (2) the County approved the tentative map *two months* after the successful incorporation election. The Developer, however, refuses to accept the legal consequences that flow from these undisputed facts. Instead, the Developer offers two principal theories (which correspond to the two issues on review) to avoid §66413.5's plain language.

First, the Developer asserts that the City did not have discretion to deny the Project's Final Map. In support, the Developer disputes §66413.5's applicability and argues that even if it applied, the City lacked discretion because its own ordinances required ministerial approval. In this contrived argument, the Developer asserts that because the City purportedly adopted the County Code without modification, the City was therefore required to approve the Final Map. These contentions are meritless.

As the Court of Appeal held, §66413.5's plain language gave the City discretion over the Final Map. And contrary to the Developer's assertion, §66413.5's legislative history fully supports that holding. Further, nothing in the City's ordinances require ministerial approval of final maps conforming to tentative maps approved by other legislative bodies, such as the County.

This last point bears elaboration. As §57376 requires, the City

adopted the County's Municipal Code upon incorporation. But, contrary to the Developer's assertions, in adopting that Code, the City concurrently modified the Code to make it applicable to the City. Thus, the City adopted the Code substituting the term "City of Goleta" for "County of Santa Barbara," and "Goleta City Council" for "County Board of Supervisors." Under the Code as adopted, the City became the sole decision-maker for all tentative and final maps for development projects in the City. When read together, the Code's ordinances only require the City to grant ministerial approval to final maps that conform to *City*-approved tentative maps. Indeed, the Developer points to no language in the ordinances that requires the City to approve final maps conforming to tentative maps approved by *other* legislative bodies and the Developer's novel interpretation is contrary not only to the ordinances' plain language, but also to state law.

Second, the Developer contends that the City is estopped from denying the Project's Final Map. Contrary to the Developer's theory, however, it is well-established that estoppel will be applied against a municipality in the land use context very rarely and with extreme caution—and certainly not under the circumstances present here. In fact, the Developer has provided no persuasive authority to justify either (1) rejecting the Court of Appeal's holding that the undisputed facts did not state a claim for estoppel or (2) reversing long-established law limiting estoppel's applicability against the government.

In addition to these two principal theories, the Developer improperly proffers two additional arguments not encompassed within the Court's grant of review. First, the Developer claims that the Final Map is deemed approved by operation of law under §66458. Second, the Developer argues

that the City's findings are legally improper and factually unsupported. Procedurally, these matters are not properly before this Court. But even if the claims were properly raised, they are substantively meritless. The City timely disapproved the Final Map and it made legally appropriate denial findings that are fully supported by the record.

In short, the Court of Appeal correctly determined that the City had discretion to disapprove the Final Map under §66413.5 and was not estopped from exercising that discretion. In an effort to avoid this legal reality, the Developer attempts to don the mantle of a beleaguered citizen whose humanitarian efforts to shelter the community have been foiled by big government. The reality is exactly the opposite. The Developer is an experienced, for-profit entity that made a deliberate business decision to push its controversial Project through the County's approval process in the face of an ongoing city incorporation.

This Court should not reward such tactics by disregarding §66413.5's language and extending estoppel's applicability. Because the County of Appeal's decision follows the law in every respect, the City respectfully requests that it be affirmed.

III.

STATEMENT OF FACTS

A. On July 4, 1999, A Petition Calling For The City's Incorporation Began Circulating.

On July 4, 1999, a petition calling for an election to decide whether the City should incorporate began circulating within the Goleta community, which at that time fell geographically within the County's unincorporated territory. Vol. 19, p. 6003.[2] The petition's first signature is dated that

[2] The Exhibits filed in the Court of Appeal in support of and in

same day. *Id.*

B. The Developer Submitted Its Vesting Tentative Map Application More Than Four Months After The Date Of The First Signature On the Incorporation Petition.

On November 18, 1999—*more than four months after the date of the first signature on the incorporation petition*—the Developer submitted a vesting tentative map application for the Project to the County. *Id.* The Developer sought approval to build 111 residential units on a 14.5-acre parcel located at the intersection of Hollister Avenue and Los Armas Road, entirely within the proposed new City's territory. *Id.* County staff deemed the application complete on January 7, 2000, and rejected the Developer's request to declare the application complete on an earlier date, stating the County "cannot subvert . . . [its] local ordinance to call your application complete earlier than January 7, 2000." Vol. 20, p. 6207.

The County Planning Commission held several hearings on the tentative map. On October 31, 2001, the Commission approved the tentative map and related applications. Vol. 19, p. 6004. This decision, however, was not final as two groups appealed to the County Board of Supervisors ("Board"). *Id.*

C. Despite The Community's November 6, 2001 Vote To Incorporate, The Developer Pushed The Controversial Project Through The County Approval Process.

The following week, on November 6, 2001, the Goleta community voted to incorporate, in part to gain control over local land use decisions. *Id.* Of course, the new City Council was particularly concerned about the Project. Accordingly, the Council-elect directed the City's Mayor-elect to

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opposition to the City's Petition for Alternative Writ or Other Extraordinary Relief constitute the record before this Court. Citations are to the volumes and page numbers of those exhibits.

transmit a letter requesting that the Board not consider the appeal and instead defer the matter to the new City for action after the City's February 1, 2002 official incorporation. Vol. 19, p. 5992.

The County and the Developer nonetheless disregarded the City's request and the Developer continued to court the County's approval. On December 4, 2001, the Board held a hearing on the tentative map. At that hearing, County Counsel noted the City's pending incorporation, stating, "there is an issue hanging in the air . . . but hasn't been named, and I'm going to take the risk of talking about the gorilla in the room, and that is the incorporation of the city of Goleta." Vol. 20, pp. 6214. County Counsel also discussed §66413.5. Vol. 20, pp. 6214-16. Despite the clear awareness of §66413.5, the Board—at the Developer's request—voted to approve the tentative map in concept. Vol. 20, pp. 6233, 6239.

Thereafter, on January 15, 2002, *two months after the successful incorporation election,* the Board denied the appeals and approved the vesting tentative map for a modified, 109-unit Project. Vol. 19, p. 6004. The County did so even though the Project violated many of its development standards; for example, the Project placed residences a mere *five* feet from internal roadways contrary to the 20-foot setback requirement. Vol. 19, p. 6008. In addition, under CEQA, the County adopted a Statement of Overriding Considerations because, according to the Developer's environmental review documents, the Project would impose *eleven* significant adverse impacts on the environment that could not feasibly be mitigated or eliminated. Vol. 19, pp. 6010-11. Thus, only two weeks before the City's incorporation became effective, the County approved the tentative map without considering the City's views.

D. After The City's Incorporation, City Staff Processed The Project As Required By Law.

On February 1, 2002, the City's incorporation became effective. Vol. 19, p. 6004. As §57376 requires, the City adopted the County's Municipal Code as its own. Vol. 19, pp. 6025-27. Significantly, however, the City adopted the County Code substituting the term "Goleta City Council" for "Board of Supervisors" and "Board," and the term "City of Goleta" for "County" or "County of Santa Barbara." *Id.* Ordinance No. 02-01 reflects these substitutions. *Id.* With these substitutions, the Code made the City the sole decision-maker for all land use projects in the City. The City subsequently readopted the County Code with the same substitutions of language because it had not yet drafted its own code. Vol. 19, pp. 6055-59.

Upon incorporation, the City also adopted an ordinance that placed a 45-day moratorium on all development, including the Project. Vol. 19, p. 6036. On March 25, 2002, the City extended that moratorium, but as §65858 requires, it exempted multi-family housing developments (such as the Project) from the continued exemption. Vol. 19, pp 6036-40.

After its incorporation, the City began the challenging task of creating a new government. Contrary to the Developer's assertion, it was not smooth sailing for the Project. For example, an email dated March 18, 2002 from Doreen Farr[3] to County staff Anne Almy, which Ms. Almy forwarded to the Developer, stated: "there continues to be a high level of interest in this project from both the community and the council and so the council wants to be consulted about all decisions regarding the clearance process." Vol. 14, p. 4351.

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[3] Ms. Farr was a consultant hired by the City to assist on land use matters. Vo. 19, p. 6028.

Thereafter, an email dated June 4, 2002 from the City's Interim City Attorney to Ms. Almy, which Ms. Almy again immediately forwarded to the Developer, stated: "As you know, the city has had some serious concerns about jurisdictional and substantive issues regarding this project . . . please take no further action with regard to this Project until further notice from the City." Vol. 14, p. 4429.

E. Even After The City's Incorporation, The Developer Courted County Approval.

The Developer's pursuit of County approvals continued even after the City's incorporation. For example, on May 23, 2002 the County approved, at the Developer's request, the final Coastal Development Permit for the Project. Vol. 19, p. 6005. On June 7, 2002, the City appealed that approval to the California Coastal Commission ("CCC"). In that appeal, the City referenced §66413.5, noting the discretion it gives newly incorporated cities over final maps under the circumstances at hand. Vol. 19, p. 6062. On July 11, 2002, the CCC decided not to consider the appeal's substantive merits. Vol. 19, p. 6005.

F. The City Exercised Its Discretion Under §66413.5 To Deny The Final Map.

Subsequently, the Developer signaled its willingness to negotiate with the City as the City began considering the Final Map. As part of that process, which occurred over meetings between August and November 2002, the City Council reviewed the Project's Development Plan and identified numerous serious problems. Vol. 19, pp. 6005 – 6006. These included:

- Problems regarding safety and emergency vehicle access due to the narrow streets and the fact that there was only one

entrance/exit to the Project's easterly and westerly areas;

- Concerns that the Project's parking was inadequate (for example, the driveways were too small to use for parking) and that as a result, the Project would impact adjacent neighborhoods that were already burdened with inadequate parking;
- Concerns for pedestrian safety because there were inadequate internal walkways;
- Concerns that some of the residences were too close to the right-of-way for Hollister Avenue, a major thoroughfare;
- Concerns about the Project's negative impact on views;
- Concerns that the number of "affordable" units was inadequate and that these units were to be affordable to upper-moderate income households (with 110 percent of the median income) rather than to low-income households;
- Concerns that the County had made numerous inappropriate exceptions to development standards, including reducing the setback requirement from 20 feet to 5 feet; and
- Concerns that the Project would impose eleven unmitigated residual significant environmental impacts. *Id.*

The Developer and the City were unable to reach compromise on these issues. The Developer then submitted the Project's Final Map to the City.

On December 16, 2002, the Council held a noticed public hearing on the Project's Final Map. Vol. 19, p. 6007. After hours of testimony, four of the five City Council members stated that they would not approve the Final Map and passed a motion directing "staff to prepare a resolution

rejecting the final map with appropriate findings and to continue this matter to the next regular council meeting to consider" adopting that resolution. Vol. 19, p. 5980-84. City staff prepared the requested resolution, which the City Council adopted at its next regular meeting on January 6, 2003. Vol. 19, pp. 6003-14.

G. The Developer Filed This Action.

On January 15, 2003, the Developer filed the present action. Vol. 1, pp. 1-30. The parties agreed to bifurcate the case and proceed first with the two writ claims. Accordingly, on March 12, 2004, the court held a trial on the first cause of action under Code of Civil Procedure ("CCP") §§1085 and 1086 and the second cause of action under CCP §1094.5.[4]

These two causes of action alleged that the City had a ministerial duty to approve the Final Map. The Developer asserted that the discretion §66413.5 affords newly incorporated cities did not apply to the City and that the City was estopped from exercising any discretion it might have had. Finally, the Developer alleged that the Final Map was deemed approved by operation of law pursuant to §66458 due to the City's purported failure to timely act on the Final Map, and that the City made incorrect and unsupported denial findings.

The court issued a tentative ruling granting the writ of mandate pursuant to CCP §1085 on the theories that the City had a ministerial duty to approve the Final Map and was estopped from denying the Final Map. Vol. 2, p. 400. The Court declined to rule on the Developer's arguments that the map was deemed approved by operation of law and that the findings were improper. Vol. 2, pp. 400, 418-21. At trial, the court

[4] The non-writ claims have not been tried.

adopted the tentative ruling with some slight modifications, and on May 4, 2004, the court issued its Order Granting Writ of Mandamus, directing the City to immediately record the Final Map. Vol. 2, p. 429.

H. The Court Of Appeal Reversed The Trial Court.

On May 10, 2004, the City filed a Request for Immediate Stay and a Petition for Extraordinary Writ or Other Appropriate Relief in the Court of Appeal, Division Six, Second Appellate District. On May 14, 2004, the Court of Appeal issued an order temporarily staying the trial court's order.

On June 29, 2004, the Court of Appeal issued an Order for Alternative Writ of Mandate. After full briefing on the merits and a lengthy oral argument, on September 30, 2004, the Court of Appeal issued its Opinion granting the City's writ petition.

In that Opinion, the Court of Appeal concluded that §66413.5 created "an exception to the general rule that approval of a final map is ministerial," holding that §66413.5's plain language gave the City discretion over the Final Map. Opinion, p. 6. The Court rejected the notion that a city was required to enact enabling ordinances in order to utilize §66413.5, reasoning that because it is a procedural statute, it is "not subject to modification by a local agency and requires no implementing legislation to be effective." Opinion, p. 7.

The Court also rejected the Developer's estoppel claim, finding that the Developer had not satisfied the requisite elements. Specifically, the Court held that any purported reliance by the Developer was not reasonable as a matter of law. The Court cited firmly established law holding that "neither a promise made nor a permit issued that is contrary to law will support an estoppel against the government." Opinion, p. 8. In addition,

the Court observed that the "undisputed evidence shows that City officials publicly voiced their concerns about the project both before and after the incorporation became effective," and found that there was no evidence that any City official, employee or agent made any express representation that the City would approve the map. Opinion, p. 9. Hence, the Court concluded, "if an express representation or issued permit is insufficient to support an estoppel against the government, the mere act of continuing to process an application as required by state law cannot do so." *Id.*

Likewise, the Court rejected the Developer's purported reliance on either: (1) the City's adoption and readoption of the County's Municipal Code, or (2) the City's exemption of multifamily housing projects from its development moratorium ordinance when that ordinance was extended. The Court reasoned that state law mandated the City to adopt the Code upon incorporation, and that the Code's readoption indicated "nothing more than the City had not yet completed drafting its own subdivision regulations." Opinion, p. 10. As for the City's moratorium ordinance, the failure to exempt the Project had no bearing on the estoppel claim. As the Court explained, the exemption language simply tracked statutorily mandated language. *Id.*

Finally, because the Developer had not met its burden of proof on the elements of estoppel, the Court declined to engage in a "lengthy discussion weighing private benefit against public harm." Opinion, p. 11. Instead, the Court said "the point is that public policy may be adversely affected by the creation of precedent where estoppel can too easily replace the legally established substantive and procedural requirements for obtaining permits . . . ." *Id.*

The Court of Appeal thus did two things. First, it applied well-established rules of statutory construction and concluded that the City had discretion pursuant to §66413.5 over the Final Map. Second, it applied well-settled law on estoppel and found that the Developer failed as a matter of law to prove reasonable reliance. These well-reasoned conclusions should be affirmed.

IV.

ISSUES PRESENTED

Because the Developer did not comply with Rule 29.1(2)'s requirement to quote the Court's statement of issues, and instead offered its own version, the City quotes the Court's statement here. In granting review, the Court identified two issues for determination:

> "(1) Must a newly incorporated city approve a final subdivision map if the county previously approved a tentative map?
>
> (2) Is a newly incorporated city estopped from disapproving a tentative map previously approved by the county if the city adopted the county ordinance requiring approval of the final map, exempted the project from a development moratorium, and worked with the developer to clear conditions?"[5]

The answer to both questions is no. As the Court of Appeal correctly held, the City had discretion under §66413.5 to deny the Project's Final Map and the City was not estopped from exercising that discretion.

Perhaps because the answer to these questions is so clearly against its position, the Developer briefed two additional claims not identified by this Court in granting review. Those additional claims are that: (1) the Final Map was deemed approved by operation of law under §66458 and (2) the City did not make legally-appropriate, factually-supported findings

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[5] These issues are quoted from this Court's online Case Summary for this matter.

under CCP §1094.5.

Including these additional issues is plainly improper. Rule 29.1(b)(3) is clear: "[u]nless the court orders otherwise, briefs on the merits must be limited to the issues [specified in the Court's order granting review] and any issues 'fairly included' in them." Neither of these additional issues is "fairly included" in determining whether the City had discretion over the Final Map under §66413.5 or whether the City was estopped from exercising that discretion. Because the Developer's §66458 and findings claims are not properly before the Court—and because the trial court expressly declined to rule on them—the Court should decline to address them.

V.

STANDARD OF REVIEW

This case calls for the Court to interpret statutes and local ordinances. Such determinations are a question of law subject to *de novo* review. *Ghirado v. Antonioli* (1994) 8 Cal.4th 791, 799. In addition, because the facts are undisputed, the estoppel issue is also reviewed *de novo*. *Metalclad Corp. v. Ventana Environmental Organization Partnership* (2003)109 Cal.App.4th 1705, 1715-16.

VI.

THE CITY HAD DISCRETION TO DENY THE PROJECT'S FINAL MAP

The first issue before this Court is whether the City had discretion to deny the Project's Final Map. As the Court of Appeal held, the City had such discretion under §66413.5's plain language.

A. Under §66413.5's Plain Language, The City Had Discretion Over The Project's Final Map.

Remarkably, the Developer failed to cite the text of the statute at issue in this case – §66413.5. Because the Developer failed to provide this crucial information, the City provides it here. In 1988, the Legislature adopted §66413.5 specifically to address situations where, as here, a newly incorporated city is asked to approve a final map conforming to county-approved tentative map. §66413.5 states:

> (b) When any area in a subdivision or proposed subdivision as to which a vesting tentative map . . . has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map and give effect to the vesting tentative map . . . if the final map meets all the conditions of the vesting tentative map . . . .
>
> ***
>
> (f) Except as otherwise provided in subdivision (g), this section applies to any . . . approved vesting tentative map that meets both of the following requirements:
>
> (1) The application for the . . . vesting tentative map is submitted prior to the date that the first signature was affixed to the petition for incorporation . . . .
>
> (2) The county approved the . . . vesting tentative map prior to the date of the election on the question of incorporation.

Under the Subdivision Map Act, the general rule is that a legislative body must approve a final map if the map conforms to a tentative map that body previously approved. Gov't Code §66474.1. *See also, Youngblood v. Board of Supervisors* (1978) 22 Cal. 3d 644, 651 (final map approval is generally ministerial). §66413.5(b) thus extends the general rule to newly incorporated cities. Under §66413.5(f), however, the "must approve"

mandate applies only if: (1) the developer submits the vesting tentative map application prior to the date of the first signature on the incorporation petition; and (2) the county approves the map before the incorporation election.

§66413.5 is clear on its face— under subdivision (f), the statute applies only when the two temporal conditions are met. Here, it is undisputed that neither prerequisite for §66413.5(b)'s "must approve" mandate was satisfied. To the contrary, the Developer submitted the vesting tentative map application to the County *over four months after the date of the first signature on the incorporation petition*, and the County approved the tentative map *over two months after the successful incorporation election.* Accordingly, §66413.5's mandate for final map approval did not apply and, as the Court of Appeal correctly held, §66413.5's plain language gave "the City discretion to deny" the Project's Final Map. Opinion, p. 6.

B. The Developer's Arguments That The City Did Not Have Discretion Are Without Merit.

The Developer has conceded that newly incorporated cities have discretion over final maps conforming to county approved tentative maps in some situations. Vol. 1, p. 70. Despite this, the Developer backpedals in its Brief and proffers three arguments attacking the Court of Appeal's finding that §66413.5 is controlling here. As shown below, each of these arguments is meritless.

1. The Developer's Argument That The City's Ordinances Required It To Approve The Final Map Is Meritless.

The Developer's central claim is that notwithstanding §66413.5, the City's own ordinances required it to approve the Project's Final Map.

Developer's Opening Merits Brief ("OB"), pp, 2, 16-17. The theory is something of a non-sequitur: the Developer contends that because the City purportedly adopted the County's Municipal Code upon incorporation without modification, it is bound to approve final maps conforming to county-approved tentative maps. Because this claim is based on both factual and legal fiction, it is meritless.

As §57376 requires, the City adopted the County's Code as its own upon incorporation. Because it was the County Code, however, all references were to the County and its governing body, the Board. Thus, to make the Code relevant to the City, the Council adopted the Code *substituting* the term "Goleta City Council" for "County of Board of Supervisors" and the term "City of Goleta" for "County of Santa Barbara." Vol. 19, pp. 6025-27. Remarkably, despite a clear record on this issue, the Developer claims the City never modified the County Code. OB, p. 6.

Chapter 21 is the portion of the City's Municipal Code containing the relevant land use ordinances. Vol. 22, pp. 6304-6435. Sections 21-6 and 21-7 establish the procedures for submitting tentative maps to the City. Section 21-6(b) specifically identifies the City Council as the "decision-maker" for all tentative maps submitted to the City for land use projects within the City's jurisdiction. Vol. 22, p. 6321. According to Section 21-6(m), the "decision-maker," *i.e.*, the City Council, shall approve, conditionally approve, or disapprove all tentative and final maps. Vol. 22, p. 6323.

Section 21-10, in turn, establishes the procedures for submitting final maps and requires ministerial approval of final maps that conform to tentative maps "approved or conditionally approved" under Chapter 21's

provisions. Vol. 22, pp. 6331-32. As noted above, Section 21-6 expressly designates the City Council as the "decision-maker" for such tentative maps. Thus, read together, Sections 21-6 and 21-10 require the City Council to approve, as a ministerial matter, *only* those final maps that conform to *City Council-approved* tentative maps. Contrary to the Developer's claim then, nothing in Chapter 21 remotely gives decision-making authority to a non-City legislative or advisory body. And nothing in Chapter 21 suggests that final maps must be approved when a non-City decision-maker approved the tentative map.

In sum, nothing in the City's Municipal Code requires the City to approve a final map that conforms to a County-approved vesting tentative map,[6] or, for that matter, a tentative map approved by any other non-City legislative body. Thus, because the City Council never approved the Project's tentative map, the Municipal Code does not require the City to grant ministerial approval to the Project's Final Map.[7]

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6 The County's Municipal Code contains identical substantive provisions, with the significant exception that the decisionmaker identified in the County Code is the County Board. Thus, the County's Code requires the County to approve a final map that conforms to a County-approved tentative map.

7 In this context, the Developer's request that the Court take judicial notice of the pleadings in lawsuit challenging the City's mobile home rent control ordinances (*Guggenheim v. City of Goleta* , U.S. District Court (C.D. Cal.), case no. CV 02-02478 (Rzx) is a red herring. The Developer argues that the City has taken an inconsistent position in that litigation because there the City argues that its Code is valid. The Developer misses the point: the City does not contend in this action that its ordinances are invalid. Rather, the City asserts that it is the Developer's interpretation of those ordinances that is incorrect. Furthermore, the request for judicial notice is procedurally defective because: (1) the request was not made in the trial court and is therefore waived; (2) the documents are not part of the administrative record (*see, Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal. 4th 559, 565); and (3) the request is improperly used as an opportunity for supplemental briefing. This evidence should therefore not be considered.

The Developer disagrees, suggesting an interpretation of the City's Code that contradicts the ordinances' plain language. That suggestion is ill-advised. It is well-established that courts must "'give effect to statutes according to the usual, ordinary import of the language employed in framing them.'" *Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639, 648, *citing Russ Blgd. Partnership v. City and County of San Francisco* (1988) 44 Cal.3d 839. "[I]f a statute is unambiguous, it must applied according to its terms. Judicial construction is neither necessary nor permitted." *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal. 4th 483, 493. Under this settled authority, the Developer's interpretation must be rejected. Quite simply, the City's ordinances require the City Council to approve only those final maps that conform to City Council-approved tentative maps.

The Developer's interpretation conflicts not only with the ordinances' plain language, but also with the Subdivision Map Act's assumption that one legislative body is generally not bound by another's land use approval. For example, §66413.5 imposes a requirement on new cities to approve final maps conforming to county-approved tentative maps when subdivision (f)'s temporal conditions are satisfied. The need to enact a statute imposing this requirement demonstrates that it is *not* generally assumed that one legislative body will be bound by another's tentative map approval.

§66474.1 also proves this point. §66474.1 provides that a "legislative body shall not deny approval of a final . . . map if *it* has previously approved a tentative map." (emphasis added). Thus, §66474.1 recognizes that there is a distinction to be made based upon which

legislative body approved the tentative map. Accordingly, §66474.1 provides additional statutory confirmation that generally, the mandate to ministerially approve a final map applies only where the same legislative body approved the tentative map.

Thus, although the Developer repeatedly claims that the City's ordinances required it to approve the Final Map, there is no support for that claim in either the ordinances' plain language or other state law provisions. Mere repetition does not make an argument true.

2. The Developer's suggestion that the City must first disavow the tentative map in order to retain discretion over the Final Map is meritless.

The Developer has also suggested—and the trial court ruled—that the City had an obligation to disavow the County-approved tentative map in order to retain discretion under §66413.5. OB, p. 16; Vol. 1, p. 270, Vol. 2, pp. 408-410. This interpretation injects an entirely new requirement into §66413.5—that in order to retain discretion to deny a final map, a newly incorporated city must (1) *sua sponte* reach out and "disavow" a county-approved tentative map before the developer submits the final map, and (2) require the developer to re-submit a tentative map application. Yet, this obligation is created out of cloth. It is nowhere in §66413.5's express language and disregards the legislative policy embodied in the statute; it effectively renders §66413.5 meaningless; and it is contrary to how quasi-judicial land use decisions are made.

First, the requirement is nowhere to be found in §66413.5. §66413.5 deals with final map approval—it says absolutely nothing about disavowing a tentative map or requiring a developer to re-submit a tentative map application. This requirement is thus contrary to §66413.5's express

language. In fact, the only factors relevant for determining whether a new city has discretion over a final map are those that the Legislature explicitly imposed in subdivision (f)—the tentative map's submittal and approval dates.

The Developer seems to have forgotten that it is within the Legislature's purview to establish the requirements for exercising discretion over final maps. The Legislature established those requirements for newly incorporated cities and they are the requirements set forth in §66413.5—nothing more, nothing less. It is beyond either the Developer's or the courts' power to re-write the statute to add new conditions. *Davidson v. County of San Diego, supra,* 49 Cal.App.4th at 648. For this reason, the Developer's focus on a purported need for tentative map disavowal is misplaced. So, too, are the repeated references to the prior unsuccessful incorporation attempts. Vol. 2, pp. 387, 407; OB, p. 4.

Second, any "disavowal" requirement would render §66413.5 meaningless. If a newly incorporated city must first disavow a tentative map and require the developer to re-submit its application, then by definition there would no longer be (1) a county-approved vesting tentative map, or (2) a final map conforming to the county-approved vesting tentative map. There would thus be no need for a statute specifying when a new city has discretion over a final map conforming to a county-approved tentative map.

Finally, the purported requirement ignores the reality that because land use decisions under the Subdivision Map Act are quasi-judicial, final maps can be approved or disapproved only when the map is submitted to the deciding body for action. *Youngblood v. Board of Supervisors, supra,*

22 Cal.3d at 651 ("[a]pproval of a tentative subdivision map is a quasi-judicial act subject to judicial review for abuse of discretion" under CCP §1094.5). Unlike quasi-legislative acts that involve formulating "rules of wide application, quasi-judicial action involves 'the active application of such a rule to a specific set of existing facts,'" thereby adjudicating individual right and interests. *Shapell Industries, Inc. v. Governing Board of Milpitas Unified School District* (1991) 1 Cal.App.4th 218, 231.

Thus, the Developer's argument reflects a fundamental misunderstanding of how government operates. When a city council takes legislative action, it creates policy and rules regarding topics that the council believes are important. In contrast, when a city council takes quasi-judicial action, it applies the legislatively-established policy to particular circumstances or issues. Just as a court may only decide cases that litigants bring before it, so too may a city council adjudicate only those issues presented for action. Accordingly, the City Council had no ability to unilaterally reach out and disavow the Project's tentative map which was never before it for action.

3. The Developer's claim that the Court of Appeal's interpretation improperly confers implied powers on new cities is meritless.

In another effort to side-step §66413.5's express terms, the Developer challenges the Court of Appeal's statutory interpretation by claiming it improperly confers implied powers on new cities. OB, p. 15. Indeed, despite conceding that a new city may sometimes deny a final map, the Developer claims that the City seeks "absolute discretion to approve or disapprove a map outside [subdivision (f)'s] safe harbor." OB, p. 15. The City, however, has not claimed it has absolute, unfettered discretion.

Rather, in reliance on subdivision (f)'s plain language, the City simply contends, and the Court of Appeal agreed, that the City had discretion over the Final Map.

This discretion does not, as the Developer argues, improperly "confer implied powers" on newly incorporated cities.[8] Rather, it tracks the statute's express terms, which state that newly incorporated cities must grant ministerial approval of final maps only when subdivision (f)'s temporal conditions are satisfied.

Nor does recognizing the City's discretion create a conflict with §66413.5(c) and (d), as the Developer asserts. Quite simply, there is no conflict. These subdivisions apply when the newly incorporated city is otherwise under §66413.5's mandate to approve a final map, and clarify a city's obligations in carrying out that mandate. Thus, subdivision (c) states that even when ministerial approval is required, a new city may nonetheless condition or deny the map if failure to do so would place the residents or community in a condition dangerous to their health or safety. This is hardly a novel proposition. In fact, this language is identical to provisions in §66498.1(c), which allows cities that are not newly incorporated (and have a ministerial duty to approve a final map) to deny or condition the final map for health and safety reasons. For its part, subdivision (e) simply confirms that the statute does not limit a new city's ability to impose reasonable conditions on subsequent approvals; this provision again tracks language in §66498(e), applicable to all cities.

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[8] The case the Developer cites, *Eastern Municipal Water District v. City of Moreno Valley* (1994) 31 Cal.App.4th 24, is not to the contrary. There, the court simply stated that cities have "'the powers expressly conferred and such as are necessarily incident to those expressly granted or essential to the declared objects and purposes of the municipal corporation.'" *Id.* at 30 (citation omitted).

In sum, the Developer has utterly failed to present any convincing argument to justify rejecting the Court of Appeal's finding that §66413.5's plain language gave the City discretion over the Project's Final Map.

C. The Statute's Legislative History Supports The City's Exercise Of Its Discretion As Well.

After disputing §66413.5's plain language, the Developer proceeds to mischaracterize the statute's legislative history. However, as explained below, that legislative history fully supports the Court of Appeal's holding that the City had discretion here.

1. §66413.5 balances competing interests of developers and new cities.

The Legislative history behind §66413.5 unequivocally shows that the Legislature enacted the statute as a compromise between developers' desire for certainty and a new city's right not to have to accept projects approved by a lame-duck county.

Significantly, when Senator Joseph Montoya originally introduced Senate Bill 186, now codified as §66413.5, the bill did not include subdivision (f)'s temporal limitations. Instead, it required all newly incorporated cities to approve *all* final maps in conformity with county-approved tentative maps, without regard to the submittal and approval dates. Vol. 1, pp. 190-92.

There were immediate objections. The League of California Cities, for example, opposed the bill's original version, stating that "a county could continue to approve tentative maps up to an incorporation date, over the objection of the residents of the city about to be formed, and nothing could be done about it." Vol. 1, p. 228.

Similarly, the legislative analysis observed that in pre-incorporation

situations, "the county has less concern about impacts from a proposed project because they are likely to no longer have jurisdiction over the area, but may receive some short-term benefits." Vol. 1, p. 215.

In response to these legitimate concerns, the Legislature revised the bill, creating subdivision (f)'s exception to the "must approve" mandate. Under the exception, the requirement to approve final maps does not apply to tentative maps submitted after the date of the first signature on the incorporation petition and approved after the incorporation election. Vol. 1, pp. 194– 201. As explained in the report for the August 10, 1988 Senate Third Reading of Senate Bill 186:

> When there is a possibility of an incorporation, there is often a "run" on various development rights . . . . To avoid this situation, this bill requires that the map application be submitted prior to the first signature on the incorporation petition . . . , and requires approval of the map prior to the incorporation election.[9] Vol. 1, p. 221.

It is worth stressing that in analyzing the bill, the Legislature expressly noted that the then-current law *did not* require a newly incorporated city to approve final maps conforming to county-approved tentative maps.[10] Vol. 1, pp. 209, 213, 219, 223. Thus, §66413.5 changed the law by requiring newly incorporated cities—for the first time—to approve final maps in situations where the county had approved the

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9 Concerns regarding "runs" appear throughout the various committee reports contained in the legislative history. *See,* Vol. 1, pp. 215–216, 226.

10 The Developer cites a 1980 Attorney General Opinion and a 1985 Legislative Council determination. These citations are misplaced. As even those opinions acknowledge, there was no case law or statutory authority prior to §66413.5 that imposed the ministerial final map approval rule on new cities. Further, §66413.5's enactment post-dates both the opinion and the determination.

tentative map. In creating this new law, however, the Legislature recognized that incorporation petitions often led to "runs" on development approvals, and so it imposed subdivision (f)'s temporal limits specifically to combat this problem.

Accordingly, §66413.5 represents a compromise between developers' desire for certainty and a new city's right to make its own land use decisions. The Legislature expressly determined which factors to consider to best strike the balance between these competing concerns.[11] As the statute shows, those factors are (1) whether the map application pre-or post-dates the first signature on the incorporation petition, and (2) whether the county's tentative map approval pre-or post-dates the incorporation election.

2. The Developer improperly disregards this legislative history.

The Developer disregards this clear legislative history, asserting that the statute was adopted to protect subdividers, not to promote a city's ability to "block" development. OB, p. 12. This argument is untenable, however. The Developer incorrectly focuses on only one of the competing interests, ignoring the new city's interests.

The Developer also disregards the import of §66413.5's legislative

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11 Notably, the Legislature has utilized these same factors in other land use statutes, including §65865.3. That statute requires newly incorporated cities to honor a development agreement entered into by the County pre-incorporation if the developer submitted the application for the agreement before the first signature on the incorporation petition and the county entered into the agreement prior to the incorporation election. The legislative history for that statute is remarkably similar to §66413.5's history, with the League of California Cities originally opposing the bill because it lacked any temporal limitations, and then withdrawing opposition once the temporal limitations were added. The City will be filing a motion asking the Court to take judicial notice of relevant portions of §65865.3's legislative history.

history by emphasizing the date it purchased the property and its purported "innocent" intent—factors the Legislature did not deem relevant. For example, the Developer stresses that it began planning the Project and acquired the property before the incorporation petition began circulating. OB, p. 21. It is well-settled, however, that a landowner acquires no right to develop simply because it purchases property or begins planning a project. *See, e.g., Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 793; *Anderson v. City Council* (1964) 229 Cal.App.2d 79, 89.

The Developer also contends that the acquisition date proves it did not intend a rush on the County for approvals. OB, p. 21. Yet, this argument is beside the point. The Legislature could have provided that in order to avoid §66413.5's requirement for ministerial final map approval, the new city had to prove that the Developer specifically intended to avoid its land use review. But, of course, the Legislature imposed no such *mens rea* requirement.

Finally, the Developer has suggested that using the date of first signature on the petition incorporation as the trigger improperly requires landowners to stand still pending the incorporation election. Vol. 1, p. 247. Again, the Developer misses the point. The law does not require the Developer to stop all planning until after the incorporation election occurs. Instead, §66413.5 put the Developer on notice that because its tentative map application was submitted after first signature on the incorporation petition and approved after the successful election, the Project's *Final Map* (not its tentative map) would be subject to discretionary review from the newly incorporated City.

In sum, the Developer may not pick and choose which portions of §66413.5's legislative history this Court should deem relevant, in an endeavor it substitute its policies and opinions for the Legislature's. If the Developer disagrees with the Legislature's policy, its recourse is in Sacramento, not in asking this Court to judicially overrule that policy.

3. The evidence is clear that the Developer rushed the Project through the County approval process with full knowledge that the City Council-elect opposed the Project.

In any event, even though the City has no obligation to prove the Developer intended to avoid its land use authority, the Administrative Record firmly establishes that the Developer rushed to receive County approvals before the City's official incorporation date. For example:

- On February 2, 2000, the County Planning Department wrote the Developer, stating "I cannot subvert our local ordinances to call your application complete any earlier than January 7, 2000." Vol. 20, p. 6207;
- In March 22, 2000, the Developer reiterated that "project schedule is a critical issue for us;" Vol. 20, p. 6206;
- At the September 19, 2001 Planning Commission meeting, County Planner Anne Almy referenced the Developer's time constraints and the resulting "insane pace with which [she] pulled the Staff Report together;" Vol. 20, p. 6198.
- On September 27, 2001, the Developer wrote the County, mentioning that it had paid a premium for "expediting the schedule;" Vol. 20, p. 6209;
- At the October 17, 2001 County Planning Commission meeting, Developer's counsel stated that "it would be of great importance

to us to get a final decision tonight if we could." Vol. 20, p. 6204; and

- On December 6, 2001, the Developer's land surveyor submitted the mapping for review "as soon as possible" as a "Fast Track" application. Vol. 20, p. 6210.

The Developer's suggestion that this rush is attributable only to the "time is money" reality of construction is simply not plausible.[12] The Developer knew the City Council-elect opposed the Project and that it had expressly asked to decide the tentative map. Vol. 19, p. 5992, Vol. 14, pp. 4351, 4429. The Developer clearly wished to avoid the Council's authority.

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[12] The Developer states that because it took 26 months to move the Project through the administrative procedural process, there cannot possibly have been a rush. Yet, two years is a short period of time, considering the Project is located in sensitive wetlands and involves numerous exceptions to local development standards Further, string-citing several cases, the Developer asserts that the County "is known for its rigorous environmental land use standards." OB, p. 23. None of the cases cited, however, stand for this proposition. Indeed, neither *County of Santa Barbara v. Purcell, Inc.* (1967) 251 Cal.App.2d 169, nor *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, deal with environmental regulation. Rather, they concern the validity of local ordinances restricting billboard placement and land mergers, respectively. *Mission Oaks Ranch Ltd. v. County of Santa Barbara* (1998) 65 Cal.App.4th 713 does not help the Developer because the County, in that case, selected an *independent consultant* to prepare the EIR. *Id.* at 717-719. Because that independent EIR identified unmitigatable impacts, the County denied the project. Here, in contrast, the County relied exclusively on the Developer's consultants and approved the Project despite the numerous unmitigatible impacts. Finally, *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1994) 7 Cal.4th 715 is inapt because the environmental review in that case took 10 years, far more than the two years here.

VII.

THE CITY IS NOT ESTOPPED FROM DISAPPROVING THE PROJECT'S FINAL MAP

The second issue on which this Court granted review (which corresponds to the Developer's second principal theory) involves determining whether the City is estopped from exercising its discretion over the Final Map. As detailed below, California courts have sharply limited estoppel's application and have found local agencies estopped only in the most extreme cases.

In the few pages of briefing that it devotes to estoppel, the Developer ignores this well-settled law and principally argues before this Court that: (1) the Court of Appeal failed to give proper deference to the trial court's findings; and (2) the Court of Appeal failed to balance the public interest and private burden that would be implicated by estoppel's application here. However, the Court of Appeal correctly recognized that the trial court's factual findings—that the City's processing of the Developer's application for Final Map approval and multifamily housing exemption from the development moratorium —do not support a claim for estoppel as a matter of law.

As the Court of Appeal properly held, the critical facts in this case demonstrate that, in the face of a statute preserving the City's discretion over the Final Map and vocal concerns from City officials and residents about the Project, the Developer chose to push the Project through the County approval process. No City employee or official ever promised that the Council would approve the Final Map. Applying estoppel on the facts of this case would reverse the long-held deference to governmental

decision-making and would greatly expand the circumstances under which a local agency could be estopped from exercising its land use discretion. The Court of Appeal appropriately rejected such a drastic change in law and so should this Court.

A. Under Established Law, Estoppel Is Applied Against Municipalities In Land Use Matters With Extreme Caution And Infrequency.

Estoppel's application against municipalities in the land use context is quite limited. *Avco Community Developers, Inc. v. South Coast Regional Commission, supra,* 17 Cal.3d at 800. It is beyond dispute that a plaintiff "faces daunting odds in establishing estoppel against a governmental entity in a land use case." *Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 321. As one court explained, "[t]he public and community interest in preserving the community patterns established by zoning laws and ordinances outweighs the injustice that may be incurred by the individual in relying upon an invalid permit to build issued in violation of those laws." *Burchett v. City of Newport* (1995) 33 Cal.App.4th 1472, 1480; *see also, Shea Homes Ltd. Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1270.

Indeed, the law is settled that "[n]o Government . . . is bound to any extent by an officer's acts in excess of his or her authority." *Burchett, supra,* 33 Cal.App.4th at 1479 (holding that where staff incorrectly informed landowners that they could obtain a permit for a nonconforming driveway, the city was not estopped from denying the permit). Furthermore, "[o]ne who deals with the public officer stands presumptively charged with a full knowledge of that officer's powers, and is bound at his peril to ascertain the extent of his powers to bind the government for which

he is an officer." *Horsemen's Benevolent & Protective Association v. Valley Racing Association* (1992) 4 Cal.App.4th 1538, 1564; s*ee also*, *County of Sonoma v. Rex* (1991) 231 Cal.App.3d 1289, 1295-96 (holding that County employees' statements that use was permitted and property owner's expenditure of $95,000 in improvements did not give rise to either estoppel or a vested right); and *Consaul v. City of San Diego* (1992) 6 Cal.App.4th 1781, 1799 (developer's "good faith subjective" belief alone does not create a vested right).

The result of this strict test is that estoppel may be invoked in the land use context against the government in only the most extraordinary case where injustice is great and the precedent set by the estoppel is narrow. *Pettit v. City of Fresno* (1973) 34 Cal.App.3d 813, 819. As the Court of Appeal correctly determined, this is not such a case.

B. The Trial Court's Factual Findings Do Not Support Applying Estoppel Against The City.

1. Because the standard for reviewing undisputed facts is *de novo*, the Developer's complaint that the Court of Appeal failed to defer to the trial court's findings is meritless.

Preliminarily, the Developer complains that the Court of Appeal improperly failed to defer to the trial court's factual findings. OB, p. 31-32. This complaint is meritless. The Court of Appeal was presented with undisputed facts and asked to determine whether they stated a claim for estoppel. The standard of review when considering undisputed facts is *de novo*. *Metalclad Corp. v. Ventana Environmental Organization Partnerships*, *supra*, 109 Cal.App.4th at 1715-16. [13] Thus, the Court of

[13] The Developer cites *Clothesrigger, Inc. v. GTE Corporation* (1987), 191 Cal.App.3d 605 to no end. In that case, the Court simply stated that deference to trial courts could be accomplished even when the trial court gave the wrong reasons for an ultimately legally correct action. *Id.* at 611.

Appeal did not "reweigh" the evidence. Rather, it looked at the undisputed evidence and determined that as a matter of law, the undisputed facts did not rise to the level necessary to prove estoppel.

2. Contrary to the Developer's assertion, the undisputed facts do not support a claim for estoppel.

The Court of Appeal correctly found that in light of the four elements necessary to prove estoppel, the undisputed facts simply did not suffice. To succeed on its estoppel claim, the Developer had the burden to specifically plead and prove the following facts: (1) that the City knew the facts (and the Developer did not); (2) that the City intended the Developer to act upon its conduct or alternatively, that the Developer had a right to believe that the City intended the Developer to so act; (3) that the Developer was ignorant of the facts; and (4) that the Developer reasonably relied on the City's alleged conduct to its injury. *Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725.

In applying these standards here, the Court of Appeal determined that there is "no evidence in the record that any official, employee or agent of the City would approve the map. To the contrary, the undisputed evidence shows that City officials publicly voiced their concerns about the project both before and after the incorporation became effective." Opinion, p. 9. The record amply supports this determination.

For example, in November 2001 the City's mayor-elect, with concurrence of the Council-elect, expressly requested that the Board refrain from hearing the appeal on the Project's tentative map and instead defer that important decision to the City that would soon have jurisdiction over the Project. Vol. 19, p. 5992. *See also, id.* (stating that City was "particularly interested" in the Project "because of its gateway status and

the ecological importance of its site"); Vol. 14, p. 4351 (March 18, 2002 email from Doreen Farr to Anne Almy, forwarded to the Developer's staff, stating: "there continues to be a high level of interest in this project from both the community and the council and so the council wants to be consulted about all decisions regarding the clearance process."); and Vol. 14, p. 4429 (June 4, 2002 email from Interim City Attorney to Ms. Almy, forwarded to the Developer, noting that, "[a]s you know, the city has had some serious concerns about jurisdictional and substantive issues regarding this project").

Not only was the Developer on notice that the City was concerned about the Project, the Developer was represented by experienced land use counsel and is presumed to know the law. *Arthur Anderson v. Superior Court* (1998) 67 Cal.App.4th 1481, 1506-07. §66413.5, which preserves the City's discretion over the Final Map, has been on the books since 1988. And the record establishes that the Developer was well aware of §66413.5. Vol. 20, pp. 6214-16. This presumption that the Developer knew the relevant law, coupled with the Developer's awareness dating back to November 2001 that the City had serious concerns about the Project,[14] supports the Court of Appeal's conclusion that the Developer knew the risks involved in pushing the Project through the County and chose to assume those risks.

Although the Developer attacks the Court of Appeal's decision, it

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[14] The Developer contends that these publicly voiced concerns are irrelevant claiming citizens rely on ordinances and official acts, not on what individual office holders say. OB, p. 33. This argument ignores the reality that the City's ordinances did not require Final Map approval and undercuts the Developer's claim that it relied on staff's conduct in processing the tentative map conditions. OB, pp. 31-33.

does not explain how any of the facts in this case support the elements of an estoppel claim.[15] Rather, in one conclusory paragraph the Developer quotes from the trial court opinion and asserts that the Court of Appeal erred by failing to "honor" these findings. OB, p. 31. As the Court of Appeal recognized, these factual findings do not in any way demonstrate that "the City induced [the Developer] to reasonably believe that the City would approve the final map." Opinion, p. 8.

To the contrary, at best, the facts showed that (1) upon incorporation the City adopted the County Code, substituting terms to make it applicable to the City; (2) the City continued to process the Developer's map; and (3) the City did not exempt multifamily housing projects from its development moratorium when it was extended.

As the Court of Appeal found, as a matter of law, these facts cannot support an estoppel claim. First, the City's adoption and readoption of the County Code does not estopp the City because, as explained above (see, *supra,* Section V B (1)), nothing in the City's ordinances required the City to approve the Final Map. Instead, the City's ordinances only require ministerial final map approval when the City approved the tentative map. As such, the City's ordinances do not support the Developer's estoppel claim.

Second, processing the map does not support estoppel either. The City and its staff were required by law to continue processing the

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15 For example, the Developer claims to have lost $1.8 million in fees and costs as a result of the City's failure to approve its Final Map. The Developer provides no citation to the record for this statement and therefore has waived the argument. Cal.Rules of Court, Rule 14(a) (requiring citation to the record); *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856 (argument unsupported by necessary record citation is waived).

Developer's map application. In *Building Industry Legal Defense Foundation v. Superior Court* (1999) 72 Cal.App.4th 1410, 1413, the Court held that a city could not adopt an interim ordinance prohibiting the processing of development applications. Under this holding, the City and its staff were required to continue processing the Project's application. Accordingly, and as the Court of Appeal held here, "the mere act of continuing to process an application as required by state law" is insufficient to support the Developer's estoppel claim. Opinion, p. 9.

Third, the Developer's reliance on the City's adoption of the moratorium ordinance is wholly misplaced. Ordinance Nos. 02-15 and 02-18 created a moratorium on development approvals in the City. Vol. 19, pp. 6036-40. The ordinances did not mention the Project, much less specifically exempt it from the moratorium. Instead, the exemption simply tracks §65858's language, which limits the time a moratorium may be imposed on developments with multifamily housing components, such as the Project, to 45 days. Because the ordinance simply included statutorily-mandated exemptions to moratoriums—without any actual mention of the Project—the Court of Appeal properly concluded that the Developer could not reasonably rely on the moratorium exemption as grounds to assume that the City would approve the Final Map. Opinion, p. 10.

In short, the Developer's attempt to bootstrap the map processing, moratorium exemption, and Code adoption into an estoppel claim fails. As the Court of Appeal correctly held, the undisputed facts simply are inadequate to prove an estoppel claim.

3. The Court of Appeal applied well-established law in rejecting the estoppel claim and the Developer has provided no authority to justify disregarding that established precedent.

In finding that estoppel did not apply, the Court of Appeal relied heavily on two cases: *Toigo v. Town of Ross, supra,* and *Penn.-Co. v. Board of Supervisors* (1984) 158 Cal. App. 3d, 1072. In *Toigo*, a developer attempted to estopp a city from finding a subdivision inconsistent with planning standards. The developer asserted that the city's prior endorsement of a "clustered alternative" encourage him to proceed. The *Toigo* court rejected this contention stating, "Town's general endorsement of a "clustered alternative" could not be viewed as the functional equivalent of a building permit establishing a vested right to proceed with the project, nor could it serve to deprive a future governmental entity of its regulatory discretion." Thus, the *Toigo* court concluded that any reliance by the developer was unreasonable as a matter of law. *Id.* at 323-24.

In *Penn-Co v. Board of Supervisors*, the Court rejected an estoppel argument based on a county's preliminary consistency finding. The developer argued the county should be estopped from denying the permit because it expended substantial funds in reliance on the initial consistency determination. The Court disagreed, noting that when the developer purchased the property in reliance on the consistency finding it was taking a business risk because the developer knew the finding was only one step in a long process.

As these cases demonstrate, estoppel is simply inapplicable in a situation like this one, where: (1) the Developer knew when it submitted its map application that there was an incorporation effort; (2) the Developer knew the City Council-elect opposed the Project and wanted to decide the

tentative map application, but nonetheless pressed for County approval; (3) the Developer knew about §66413.5 and the discretion it gives newly incorporated cities when the temporal limitations are not satisfied; (4) the City never promised to approve the Final Map; and (5) City staff simply processed the map as the law requires.

The Developer has cited no law in its opening brief that supports its attempt to expand the estoppel doctrine, nor do the cases it cited in its prior pleadings justify departing from long standing estoppel law. See, Petitioners Opening Trial Brief, Vol. 1, pp. 91-92, citing *Citizens of Goleta Valley v. Board of Supervisors, supra*, *Anderson v. City of La Mesa* (1981) 118 Cal.App.3d 657 and *Kieffer v. Spencer* (1984) 153 Cal.App.3d 954.

First, *Citizens of Goleta Valley v. Board of Supervisors* does not even touch on the estoppel doctrine. In that case, the Court simply stated that it disapproved of the "tactic of withholding objections . . . solely for the purpose of obstruction and delay." *Citizens of Goleta Valley v. Board of Supervisors, supra,* 52 Cal.3d at 568. Here, of course, rather than withhold objections to the Project, the City Council-elect specifically requested that it be allowed to hear the appeal on the tentative map and once the City incorporated, it continued to voice its substantive concerns about the Project.

Equally inapposite is *Anderson v. City of La Mesa.* In that case, because the homeowner built her residence in compliance with the general zoning ordinances and because the city failed to notice the alleged set back deficiencies despite six inspections, the Court determined that the city should be estopped from refusing to grant the variance. Here, in contrast to *Anderson's* good faith homeowner, the Developer made a deliberate choice

to push its Project through County approvals even though it knew the City wanted to hear the appeal on the tentative map application.

Lastly, the *Keifer v. Spencer* decision is completely factually inapt. In that case, the Court of Appeal specifically noted that the city had made affirmative representation that should have been known to be untrue and even advised petitioners to act contrary to the law. *Keifer v. Spencer*, 153 Cal.App.3d at 963. Under those circumstances, the Court found estoppel to apply. Here, in sharp contrast, the undisputed evidence establishes that the City made no affirmative promise or representation that it would approve the Final Map. Rather, the evidence shows that the Developer took the risk of pursuing County approvals even though it knew §66413.5's discretionary denial rights would apply.

For these reasons, applying estoppel in these circumstances is legally unsupportable and would in fact constitute a change in long-settled law. Such changes in *stare decisis* should not be made lightly. And such a change is certainly not justified in the absence of affirmative representations and when the effect would be to render §66413.5 meaningless.

C. Assuming *Arguendo* That It Is Necessary To Balance The Competing Interests Despite The Developer's Failure To Meet Its Evidentiary Burden, Public Policy Weighs Against Applying Estoppel Here.

As the Court of Appeal correctly found, the Developer failed to meet its burden to prove each of the four elements of estoppel. As such, there is no need to reach the public policy issues. *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-97(only after the plaintiff has shown the elements of estoppel is the court required to conduct a balancing process to determine whether the injustice to the private party has "sufficient

dimension" to justify the effect on the public interest and policy that would result from applying estoppel).

But assuming *arguendo* that balancing is necessary, the public harm that would flow from applying estoppel here would far outweigh any potential harm to the Developer. Indeed, applying estoppel here would reverse well-established law and set a dangerous precedent by expanding estoppel's applicability against governmental entities. Such expansion would necessarily limit municipalities' exercise of their land use discretion.

In addition, it would overrule §66413.5 and eliminate any new city's ability to exercise the discretion permitted under that statute. This is because central to the Developer's estoppel claim is its argument that in adopting the County's Municipal Code, the City agreed to approve the final map on a ministerial basis so long as it conformed to the County-approved tentative map. But, §57376 requires every new city to adopt the relevant county municipal code. It is likely that most counties have provisions regarding final map approval similar to County's at issue here. Thus, to the extent that every newly incorporated city follows its statutory duty to adopt the relevant county code, that city would be agreeing to approve final maps that conform to county-approved tentative maps, thereby eliminating any discretion that might have been available under §66413.5. Applying estoppel in a way that would invalidate the ability of newly incorporated cities throughout the state to utilize §66413.5's discretion is contrary to public policy.

Applying estoppel here would also encourage developers throughout the state to ignore §66413.5—and the Legislature's clearly expressed intent behind that statue—and push projects through lame-duck county approval

processes. Essentially, it would allow developers to thumb their figurative noses at new cities.

The Developer, of course, disagrees, and presents a parade of horribles that supposedly would result from denying its request for estoppel. For example, the Developer posits that the harm to it is great due to the lost business opportunity and its financial expenditures. OB, p. 33. This claim rings hollow, however, given that much of its expenditures since the City's incorporation are refundable (Vol. 14, pp. 4439, 4441-42, 445, 4447-48) and considering that it made a conscious business decision to reject the City's request to decide the tentative map. Nor is the Developer's argument that development costs throughout the state would skyrocket persuasive, because that argument is based entirely on the fiction that the City "arbitrarily disregarded" its own ordinances. OB, p. 20.

The Developer also suggests that harm to the public will be great because 109 housing units, including 22 "affordable" units, will be lost. OB, p. 33. This is simply not true. The City's resolution denying the Project stated that the denial was "without prejudice," and noted that the Council had not determined the site to be unsuitable for the proposed density. Vol. 19, pp. 6012-13. This, coupled with the Council's clearly expressed preference for more affordable units at more "affordable" prices, thoroughly rebuts the Developer's claim regarding the loss of affordable housing.

Although the Developer does not acknowledge it, it is seeking a drastic change in established law on estoppel's applicability against municipalities. Because the undisputed facts do not state a claim for estoppel and because the Developer has provided no justification for

disregarding long-settled precedent, the Court of Appeal's finding on estoppel should be affirmed.

VIII.

THE DEVELOPER'S §66458 AND FINDINGS CLAIMS ARE PROCEDURALLY AND SUBSTANTIVELY IMPROPER

A. The City Made Legally Appropriate And Factually Sufficient Findings To Support Denial.

The Developer also challenges the City's Final Map disapproval by claiming that: (1) the City made the legally incorrect findings, and (2) the evidence does not support those findings. As noted earlier, this issue is not properly before this Court. However, even if the issue were properly raised, it is nonetheless meritless because the record demonstrates that the City made legally-appropriate, factually-supported findings.

Specifically, the Developer challenges the City's January 6, 2003 resolution which states, *inter alia*, that the "design of the subdivision is likely to cause serious public safety and or/health problems." Vol. 19, pp. 6009-6012.[16] The Developer claims these findings are legally insufficient because they use the phrase "likely to cause serious" health and safety problems. OB, p. 24.

In support, the Developer points to §§66498.1(c) and 66413.5(c),

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16 The Developer claims that the City is precluded from making health and safety findings because the City did not challenge the County's EIR and tentative map approval or the CCC's refusal to hear the City's appeal. In support, the Developer cites *Briggs v. City of Rolling Hills Estates* (1995) 40 Cal.App.4th 673. This case is distinguishable. There, the Court of Appeal held that the exclusive remedy for homeowners challenging a zoning decision was a CCP§1094.5 action. *Briggs* does not suggest, much less hold, that for newly incorporated city to retain discretion over a final map, that it must have brought a lawsuit under §1094.5 to challenge County approvals.

which use the phrase "would place" the residents in a condition dangerous to their health and safety. This argument is meritless. First, §§66498.1(c) and 66413.5(c) apply to situations where a city must grant ministerial approval to a final map, giving such cities an escape route to avoid approvals for health and safety reasons. Here, the City did not have a ministerial duty to approve the Project's Final Map. Thus, those statutes—and the "would" language contained therein—are simply not controlling. Moreover, given the detailed findings and extensive record evidence supporting them, the fact that the City used the term "likely to" instead of "would" improperly elevates form over substance.

Notwithstanding the City's detailed findings and supporting evidence, the Developer claims that there is no evidence supporting many of the findings. The Developer relies on its "analysis," attached as an Exhibit to its Trial Brief. But as the Developer conceded in the trial court, that analysis was "not intended to serve as evidence." Exh. Y, p. 6373. Moreover, even if it were, it is beyond dispute that the City Council is not bound to accept the opinions of the Developer's paid consultants. *Browning-Ferris Industries of California, Inc. v. City Council of the City of San Jose* (1986) 181 Cal.App.3d 852, 863; *Carmel Valley View Ltd. v. Board of Supervisors* (1976) 58 Cal.App.3d 817, 822.

The Developer's difference of opinion notwithstanding, the City's findings are sufficient and the City's Staff Report amply supports those findings. In its trial brief and reply brief in the Court of Appeal, the City provided a chart detailing its findings and the evidence supporting them. *See*, Vol. 1, pp. 168-176. As this chart demonstrates, the City made numerous detailed findings that bridge the "analytic gap" and are fully

supported by the record. *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515. The City's findings focused on two themes: the Project violated many crucial design standards and the Project indisputably would cause numerous significant adverse environmental impacts, as explained in the Project's Supplemental Environmental Impact Report.[17]

The Developer, in particular, disputes the City's finding that the setbacks—which allow the homes to be as close as *five feet* to the internal roadways—are not appropriate, relying on their own consultant's statement that having a house and garage located five feet from the street "should not pose a problem." Vol. 19, p. 5946. The City, however, is allowed to reject such speculative opinion and instead rely on staff's opinions that the standard 20-foot setback is necessary and that a five-foot setback was inappropriate. Vol. 19, p. 5988. Indeed, courts routinely recognize that staff opinion constitutes substantial evidence supporting administrative findings. *Browning-Ferris Industries, supra,* 18 Cal.App.3d at 866; *see also, Coastal Southwest Development Corporation v. California Coastal Zone Conservation Commission* (1976) 55 Cal.App.3d 525, 535-36.

The Developer also quibbles with the City's finding that parking for the Project was inadequate. OB, p. 26-27. Yet, the City's Planning Department and Traffic Division noted that not only was the number of

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17 As the City's Staff Report summarized:
"The Citizens of Goleta should be provided the same level of health and safety protection as any other citizen, and should be allowed to determine the appropriate land uses for the gateway to the City. Staff does not believe the need to provide affordable housing overrides the health and safety of the citizens of the City of Goleta and does not believe the significant effects on the environment listed [in the Supplemental EIR] are acceptable." Vol. 19, p. 5990.

parking spaces inadequate for the Project's size and multi-family character, but some of the spaces did not even meet Code requirements. Vol. 19, p. 5988. This evidence, in combination the common knowledge that parking is problematic in the Goleta area, constitutes substantial evidence supporting the City Council's finding regarding inadequate parking. *Browning-Ferris Industries, supra,* 181 Cal. App. 3d at 866; *Coastal Southwest Development Corporation, supra,* 55 Cal. App. 3d at 535-536.

The Developer also takes issue with the City's dissatisfaction with the Project's "affordability." OB, p. 28. Yet, it is undisputed that the Project fails to provide housing for very low income families, focusing instead on the upper range of "affordability." Similarly, it is undisputed that only 20% of the 109 units, approximately 22 units, would be set aside as "affordable." The City Council was well within its discretion to question a Project that bills itself as "affordable," even though only 20% of the units would be "affordable," and would be targeted at the high range of "affordability."

Plainly, this is not a situation of the record failing to support the findings; rather it is a situation of the Developer's hired gun disagreeing with City staff and the Developer now asking the Court to substitute its own opinions for the City's. This, of course, is not within the Court's power. *Topanga Association for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, 1357; *McMillan v. American General Finance Corporation* (1976) 60 Cal.App.3d 175, 182. To the contrary, any reasonable doubts must be resolved in favor of the administrative findings and decisions. *Topanga Association for a Scenic Community v. County of Los Angeles, supra,* 11 Cal.3d at 514; *McMillian,*

supra, 60 Cal.App.3d at 182.

With these standards in mind, even a cursory review of City's findings and the record evidence supporting them compels a conclusion that City's denial passes muster. As such, the Developer's challenge to the findings and evidence must fail, both procedurally and substantively.

B. The City Council Timely Disapproved The Final Map.

Finally, the Developer claims that the Final Map is deemed approved by operation of law, specifically, §66458. As discussed earlier, this issue is not properly before this Court. But even assuming the argument were properly raised, it is meritless.

§66458(a) states that the legislative body must approve or disapprove the final map at the meeting at which the legislative body receives the map or at its next regular meeting. §66458(b) continues that if the legislative body "does not approve or disapprove the map within the prescribed time, or any authorized extension thereof, and the map conforms to all requirements and rulings, it shall be deemed approved."

Within that legal framework, it is necessary to understand the factual chronology of the Final Map's submission:

- **November 27, 2002**—City's Engineering Department received unsigned "originals" of the Project Final Map mylars, and related dedications, public improvements and bonds. Vol. 19, p. 5985.
- **December 5, 2002**—Developer submitted additional documents to the City related to the Final Map, including public improvement plans, street improvements, and necessary clearance letters. Vol. 22, p. 6303.
- **December 16, 2002**—City Clerk and City Council received the

Final Map and related documents at the 6 p.m. regular meeting. Vol. 19, p. 6007.

- **December 16, 2002**—After public hearing and based on City Staff's report, 4 Council members stated they would not approve the Final Map and by a 4 to 1 vote, the City Council directed staff to draft a resolution supporting that disapproval. Vol. 19, pp. 5980-5984.
- **January 6, 2003**—At its next regular meeting, the City Council adopted the resolution supporting the December 16 denial. Vol. 19, pp., 6003-6014.

Without citation to any authority, the Developer suggests that the relevant meeting for §66458 purposes is the December 2nd regular meeting. But the Developer submitted materials necessary to Final Map consideration, such as clearance letters, on December 5th—after the December 2nd meeting. Given that sequence, it makes no sense to argue that the Final Map was received by the legislative body on December 2nd. If so, why was the Developer continuing to submit materials necessary for Final Map approval to the City after that date, on December 5th?

Instead, the only reasonable interpretation of the facts is that the trigger for §66458—the "meeting at which the legislative body receive[d] the final map"—was the December 16th regular meeting. That, after all, is the meeting at which the City Clerk presented the Final Map to the City Council for action. At that same meeting, the City Council disapproved the Final Map. Hence, the City complied with §66458's timelines.

The Developer disagrees, arguing that the December 16th disapproval was not a "final action." The Developer also relies on some

typographical errors mistakenly identifying certain afternoon special meetings as regular meetings. Both arguments fail.

First, it is clear that a city council does not have to take "final action" to avoid having a final map be deemed approved by operation of law. For example, in *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, the Court interpreted §66452.4, which deals with tentative map approval but includes the same "approve or disapprove" language as §66458. In that case, the legislative body did not take final action, but directed staff to reformulate a resolution with findings for denial. The Court of Appeal found that process satisfactory because the statute does not require council's action to be final. *Id.* at 1176; *see also*, *Carmel Valley View, Ltd. v. Maggini* (1979) 91 Cal.App.3d 318 (finding that in requesting a supplemental EIR, the City had "implicitly disapproved the map" and therefore placed the plaintiff on notice that the map would be disapproved). Under these cases, which interpret language identical to §66458's language, the City's December 16th action was sufficient, as the Developer was certainly on notice that its map would not be approved.

Second, the special meeting vs. regular meeting issue is a red herring. §54954 requires a city to adopt an ordinance or resolution establishing the time and place of its regular meetings. The City did so through Ordinance No. 02-15, which sets the City's regular meetings as the first and third Mondays at 6:00 p.m. Vol. 22, p. 6278. As explained in the Declaration of City Manager Frederick Stouder (Vol. 22, pp. 6273-75), the meetings held at 1:30 p.m. on December 2nd and 15th, 2002 and on January 6, 2003 were study sessions for City Council, with the regular meeting held at 6 p.m. on those dates. To the extent that the agendas

identify them as anything other than a special work study session, it is a typographical error. Vol. 22, p. 6276.[18]

In sum, the evidence establishes that the City Council received the Final Map at its December 16, 2002, 6:00 p.m. regular meeting. At that meeting, it disapproved the Final Map by stating it would not approve the map and directing staff to draft a resolution with denial findings. The City Council adopted that resolution at the City's next regular meeting on January 6, 2003 at 6:00 p.m. §66458's time requirements were thus satisfied.

IX.

CONCLUSION

The Developer's Brief is nothing but smoke and mirrors. The Developer urges this Court to ignore the plain language of both §66413.5 and the City's ordinances, under which the City had discretion to deny the Final Map. But the Developer fails to present a single argument to justify rejecting either the statute's or the ordinance's express terms. The Developer also urges this Court to radically change settled law regarding estoppel and expand its applicability to a situation where no express promises were made and staff simply processed a map as the law requires. But the Developer again provides absolutely no legal authority to support changing the law.

Quite simply, the Court of Appeal followed the law in holding that

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[18] Notably, §54954.3 states that the City cannot call and hold a regular meeting at any time other than the time established in its ordinance, and all regular meetings must reserve time for public comment. Here, the afternoon special meeting that the Developer references do not have separate agenda headings for public comment. Vol. 22, pp. 6287-88, 6296-98. In contrast, the agendas for the first and third Monday evening regular meetings include a heading for "public forum." Vol. 22, pp. 6283, 6285, 6289-94, 6299-6301.

(1) the City had discretion to deny the Final Map, and (2) the City was not estopped from exercising that discretion as a matter of well-settled law. The City therefore respectfully asks that the Court of Appeal's decision be affirmed.

DATED: April 18, 2005

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, Rule 14(c)(1), the City of Goleta and City Council of the City of Goleta hereby certifies that:

1. This brief is double spaced except for footnotes and quotes; and

2. This brief uses a proportionally-spaced typeface of 13 characters per inch. There are a total of 13,736 words in this brief, which is 50 pages long.

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Supreme Court Case No. S129125 Court of Appeal Case No. B175054

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 3403 Tenth Street, Suite 300, Riverside, California.

On April 18, 2005, I served the following document(s): **ANSWER BRIEF ON THE MERITS** on the interested parties in this action as follows:

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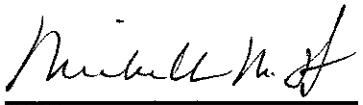
Executed on April 18, 2005, at Riverside, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



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